



PUBLIC NOTICE

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REMINDER REGARDING VIDEO PROGRAMMING DISTRIBUTORS' OBLIGATION TO MAKE EMERGENCY INFORMATION ACCESSIBLE TO PERSONS WITH HEARING OR VISION DISABILITIES

As we enter hurricane season, the Federal Communications Commission ("Commission") issues this Public Notice to remind video programming distributors – including broadcasters, cable operators, satellite television services, and "any other distributor of video programming [such as over fiber] for residential reception that delivers such programming directly to the home"¹ – of their obligation to make emergency information accessible to persons with hearing and vision disabilities in accordance with section 79.2 of the Commission's rules.² Under section 79.2, emergency information encompasses "critical details" regarding the emergency and how to respond to the emergency.³ It also provides information for consumers about how to contact the video programming distributor (VPD) or the Commission regarding compliance with the rule.

We stress that the need to comply with section 79.2 and make the critical details of emergency information accessible is not always limited to the immediate geographic areas affected by the emergency because, for example, information about the relocation of individuals outside that immediate geographic area also falls within the rule's mandate.⁴ Accordingly, compliance with section 79.2 could include providing information to non-impacted areas sheltering individuals displaced by a large-scale disaster, such as that which occurred during Hurricane Katrina in 2005. In that case, the need to comply with

¹ 47 C.F.R. § 79.1(a)(2) (defining "video programming distributor").

² See 47 C.F.R. § 79.2. Because of the importance of this issue, we have issued several similar Public Notices in the past. See Public Notice, 16 FCC Rcd 15348 (CIB Aug. 13, 2001); Public Notice, 17 FCC Rcd 14614 (CGB July 31, 2002); Public Notice, 18 FCC Rcd 14670 (CGB July 18, 2003); Public Notice, 19 FCC Rcd 9882 (CGB May 24, 2004); Public Notice, 20 FCC Rcd 5918 (CGB Mar. 17, 2005); Public Notice, 20 FCC Rcd 14619 (CGB Sept. 9, 2005) (*Hurricane Katrina PN*); Public Notice, 21 FCC Rcd 7994 (CGB July 20, 2006); Public Notice, 21 FCC Rcd 9066 (CGB Aug. 7, 2006); Public Notice, 21 FCC Rcd 15084 (CGB Dec. 29, 2006) (*December 2006 PN*); Public Notice, 24 FCC Rcd 11738 (CGB Sept. 3, 2009).

³ See 47 C.F.R. § 79.2(a)(2).

⁴ See 47 C.F.R. § 79.2 Note to paragraph (a)(2): "Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance."

section 79.2 extended to areas throughout the country where evacuees were temporarily re-located.⁵ In addition, we note that there are times when the airing of emergency information pertaining to a matter of national importance will also be of local concern, and therefore should be made accessible.

There are no exemptions to section 79.2, and all VPDs that air emergency information are required to make the information accessible. A local broadcast licensee is responsible for complying with section 79.2 regardless of the technology used to deliver its signal to consumers.

In the case of persons who are blind or have low vision, emergency information that is provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming must be made accessible.⁶ The Commission expects that, in accordance with existing regulations, VPDs will aurally describe the emergency information in the main audio as part of their ordinary operations; this is similar to providing “open” video description.⁷ In addition, if the emergency information is being provided in the video portion of programming that is *not* a regularly scheduled newscast (*e.g.*, the programmer provides the emergency information through “crawling” or “scrolling” during regular programming) or a newscast that interrupts regular programming, the information must be accompanied by an aural tone.⁸ This tone is intended to alert persons with vision disabilities that the VPD is providing emergency information, and that such persons, therefore, should tune to another source, such as a radio, for more information. Repeating the aural tone at frequent intervals, or at least as often as the content of the crawl or scroll changes, would be helpful to viewers reliant on these tones. In addition, while our rules do not presently require VPDs to provide more than an aural tone in these instances, to the extent that a VPD can provide additional emergency information in an accessible format after it sounds this tone, such as on the VPD’s website or through a telephone recording, such information would be of great benefit to consumers with vision loss.⁹ Without such additional information, these consumers are left to speculate as to what the emergency entails and have little direction on where to obtain additional guidance for responding.¹⁰ In the coming months, the Consumer and Governmental Affairs Bureau will be exploring other ways to ensure that people who are blind or have low vision are able to obtain the information they need to effectively respond to televised emergencies.

Emergency information also must be provided in a manner that is accessible to persons who are deaf or hard of hearing. Commission rules require that emergency information provided in the audio portion of the programming be made accessible using closed captioning *or* other methods of visual presentation, including open captioning, crawls or scrolls that appear on the screen.¹¹ Emergency information provided by these means may not block any closed captioning, and closed captioning may not

⁵ See *Hurricane Katrina PN*.

⁶ See 47 C.F.R. § 79.2(b)(1)(ii).

⁷ See *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC Rcd 15230, 15250, para. 49 (Aug. 7, 2000).

⁸ See 47 C.F.R. § 79.2(b)(1)(iii).

⁹ Of course, such information would only be beneficial to the extent that viewers are made aware that it is being provided via these websites or phone lines.

¹⁰ The American Council of the Blind raised these concerns in a Petition requesting the Commission to improve its rules governing the provision of emergency information by people who are blind or have low vision. See Petition for Rulemaking, filed by the American Council of the Blind, Oct. 9, 2008, RM 11499, Public Notice issued Oct. 16, 2008.

¹¹ See 47 C.F.R. § 79.2(b)(1)(i); *December 2006 PN*, 21 FCC Rcd at 15086.

block any emergency information provided by crawls, scrolls, or other visual means.¹² The “pass through” obligation, generally requiring VPDs to ensure that viewers receive closed captions intact under section 79.1, also applies to emergency information encompassed by section 79.2.¹³

Distributors that are not permitted by Commission rules to count captions created using the electronic newsroom technique (ENT)¹⁴ are required to provide closed captions on all new non-exempt programming, including breaking news and emergency alerts.¹⁵ We recognize that emergency information is the type of information that is typically not available in advance, and that it may be difficult for some stations to obtain closed captioning services on short notice. Nevertheless, we emphasize that during the period in which a station may be making arrangements to obtain closed captioning services, section 79.2 requires emergency information provided by that station to be made accessible by some other visual presentation method, in a manner that ensures the same access to emergency information for persons with hearing loss as for any other viewer.¹⁶

Similarly, entities that are permitted to and are using captions created with ENT for their live programming (for determining compliance with section 79.1)¹⁷ are reminded that if the ENT method does not automatically caption non-scripted news, the provider must either caption or make the emergency information accessible by some other form of visual presentation as required by section 79.2.¹⁸ Lastly, a distributor in a market that is permitted to use ENT, but chooses to use real-time captions rather than ENT for its live programming, must caption emergency information contained in that programming.

Consumer Complaints and Enforcement

The Commission will continue to monitor closely complaints alleging violations of section 79.2, and will review for possible enforcement action.

If you are a consumer who has a complaint regarding the lack of emergency information being presented in an accessible format, you may contact the VPD directly for quick resolution of the problem,

¹² See 47 C.F.R. § 79.2(b)(3)(i).

¹³ See 47 C.F.R. § 79.1(c). All video programming distributors are required to pass through any captions that they receive from the originating source and are responsible for maintaining their equipment in working order to ensure the accurate transmission of the closed captions. *See Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Accessibility of Emergency Programming*, MM Docket No. 95-176, Second Report and Order, 15 FCC Rcd 6615, 6622, para. 13 n.48 (April 14, 2000) (2000 Order).

¹⁴ See 47 C.F.R. § 79.1(e)(3). The relevant text of that subsection reads: “Live programming or repeats of programming originally transmitted live that are captioned using the so-called ‘electronic newsroom technique’ will be considered captioned, except that effective January 1, 2000, and thereafter, the major national broadcast television networks (i.e., ABC, CBS, Fox and NBC), affiliates of these networks in the top 25 television markets as defined by Nielsen’s Designated Market Areas (DMAs) and national nonbroadcast networks serving at least 50% of all homes subscribing to multichannel video programming services shall not count electronic newsroom captioned programming towards compliance with these rules.”

¹⁵ See *December 2006 PN*, 21 FCC Rcd at 15084. The Commission’s rules permit the use of “[o]pen captioning or subtitles in the language of the target audience” in lieu of closed captioning. 47 C.F.R. § 79.1(e)(2).

¹⁶ See 47 C.F.R. § 79.2(b)(1)(i).

¹⁷ See 47 C.F.R. § 79.1(e)(3).

¹⁸ See 2000 Order, 15 FCC Rcd at 6623-24, para. 16.

or you may file a complaint with the FCC. If you do not have contact information for the VPD, you can locate VPD contact information by searching the VPD Registry located on the FCC's webpage at: <http://esupport.fcc.gov/vpd-search/search.action>.

If you decide to complain directly to the FCC, your complaint should include:

- The name of the VPD (*e.g.*, broadcast station, cable company, satellite TV provider, local telephone company) against whom the complaint is alleged;
- The date and time of the transmission of emergency information that was in a format not accessible to persons with disabilities; and
- The type of emergency.

You can file your complaint with the FCC using the on-line complaint Form 2000C found at <http://www.fcc.gov/cgb/form2000c.html>. You also may contact the FCC by letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, Braille, or any other method that would best accommodate your disability. Send your complaint to:

Federal Communications Commission
Consumer and Governmental Affairs Bureau
445 12th Street, SW
Washington, DC 20554
Phone: 1-888-225-5322 (voice); 1-888-835-5322 (TTY)
E-mail: fccinfo@fcc.gov
Internet: www.fcc.gov/cgb/complaints.html
Fax: 866-418-0232

Fact sheets summarizing the closed captioning and access to emergency information rules are available at the FCC's Web site at <http://www.fcc.gov/cgb/consumerfacts/closedcaption.html>, and <http://www.fcc.gov/cgb/consumerfacts/emergencyvideo.html>.

To request this *Public Notice* or any other materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). This *Public Notice* can be downloaded in Word and Portable Document Formats (PDF) at http://www.fcc.gov/cgb/dro/emergency_access.html.

Consumer and Governmental Affairs Bureau Contact: Amelia Brown, (202) 418-2799 (voice); (202) 418-7804 (TTY); e-mail Amelia.Brown@fcc.gov.

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